

REMARKS

Claims 1-14 and 21-29 are pending. By this amendment, claim 1 has been amended to more particularly point out Applicant's claimed invention. No claims have been added or cancelled. The specification has been amended to specifically incorporate subject matter from U.S. patent 5,200,248 to Thompson et al., which was incorporated by reference in the instant application on page 24, line 30-page 25, line 2. In particular, the '248 patent supports the added text, for example, at column 12, lines 43-48, column 12, line 67 to column 13, line 2, column 17, lines 24-26 and Figs. 24 and 25. The amendment of claim 1 is supported by the added text to the specification as well as the original specification, for example, at page 15, lines 26-31. No new matter is introduced by the amendments.

Applicant thanks the Examiner for the courtesy extended to their undersigned representative and to Jason Galdonik, Vice President for Research and Development/Operations, for Applicant, in a personal interview on August 27, 2008. Mr. Galdonik showed the operation of a commercial device for embolic protection based on surface capillary fibers. A video was shown of the device being used in a model system, and a comparison with other commercial devices was presented. Also, the results from a human clinical trial were presented. The claims were then discussed in the context of the cited references. The Examiner explained the features of the claims that did not clearly distinguish the references, and he suggested alternative approaches to express the structural features of the device to better clarify the distinctions.

All of the pending claims stand rejected. Applicant respectfully requests reconsideration of the rejections based on the following remarks.

***Claim Rejections – 35 USC 102***

1. Claims 1, 5-10, 12-14, and 21-29 were rejected under 35 USC 102(b) as being anticipated by US 5,693,067 to Purdy (Purdy). Claim 1 has been amended to more particularly point out Applicant's claimed invention. In view of the clarifying amendments, Purdy does not *prima facie* anticipate the claimed invention. Applicant respectfully requests reconsideration of the rejection based on the following comments.

Purdy fails to disclose surface capillary fibers with grooves extending along the length of the fiber, as presently claimed. This feature or anything similar is completely lacking from the teachings of Purdy. Furthermore, claim 1 specifies that the device has a deployed configuration with "a porous structure that blocks a substantial majority of particulates with a diameter greater than 0.2 mm." The Purdy device is designed to block flow, and to completely block flow following blood clotting. The Purdy device is not designed to filter flow and thus does not teach or suggest the claimed porous structure with specific filtering ability that is now specified in the claim. Since Purdy clearly does not teach at least two specific features of the claim, Purdy clearly does not *prima facie* anticipate Applicant's claimed invention. Accordingly, these claims are allowable over Purdy. While Applicants do not acquiesce in the assertions regarding the dependent claims, these issues are not discussed further in view of the discussion of claim 1 above that makes the issues of the dependent claims presently moot.

2. Claims 1, 5, 9, 10, 13, 14, and 21-29 were rejected under 35 USC 102(e) as being anticipated by US 6,395,014 to Macoviak et al. (Macoviak). Claim 1 has been amended to more particularly point out Applicant's claimed invention. Since Macoviak does not teach or suggest

several features of the claimed invention, Macoviak does not *prima facie* anticipate Applicant's claimed invention. Applicant respectfully requests reconsideration of the rejection based on the following comments.

Macoviak does not teach surface capillary fibers with grooves extending along the length of the fiber. Furthermore, Macoviak does not teach a structure with a fibrous structure that is configured to fill the lumen of a vessel. Since Macoviak fails to teach at least these features of the presently claimed invention, Macoviak clearly does not *prima facie* anticipate Applicant's claimed invention. Accordingly, the present claims are allowable over Macoviak et al. While Applicants do not acquiesce in the assertions regarding the dependent claims, these issues are not discussed further in view of the discussion of claim 1 above that makes the issues of the dependent claims presently moot.

#### ***Claim Rejections – 35 USC 103***

Claims 2-4 and 11 were rejected under 35 USC 103 as being unpatentable over Purdy. The shortcomings of Purdy with respect to the independent claims are discussed in detail above. Based on these arguments, Purdy clearly does not render claims 2-4 and 11 *prima facie* obvious since Purdy does not teach or suggest specific features of the claimed invention. While Applicants do not acquiesce in the assertions regarding the dependent claims, these issues are not discussed further in view of the discussion of claim 1 above that makes the issues of the dependent claims presently moot.

#### **CONCLUSIONS**

In view of the foregoing, it is submitted that this application is in condition for allowance. Favorable consideration and prompt allowance of the application are respectfully requested.

Application No. 10/806,311

The Examiner is invited to telephone the undersigned if the Examiner believes it would be useful to advance prosecution.

Respectfully submitted,

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